



California Fair Political Practices Commission

March 29, 1989

Ralph R. Burris
Personnel Director
Antioch Unified School District
510 "G" Street
Antioch, CA 94509

Re: Your Request for Advice
Our File No. A-89-136

Dear Mr. Burris:

This is in response to your request for advice regarding your responsibilities under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

You are the personnel director and assistant superintendent, business services, of the Antioch Unified School District. You have filed a personnel grievance with the district. Under this set of facts, are you disqualified from submitting to the district's personnel commission and recommending for adoption personnel rules which may affect your grievance and the terms and conditions of your employment with the district?

CONCLUSION

You may submit to the district's personnel commission and recommend for adoption personnel rules which may affect the terms and conditions of your employment with the district, unless acceptance of your proposals by the personnel commission is likely to result in a reduction or increase of your personal expenses, income, assets or liabilities by \$250 or more.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

FACTS

You are the assistant superintendent, business services, and personnel director for the Antioch Unified School District. In this capacity, you have requested that the district's personnel commission adopt certain personnel rules which may have an impact on the terms and conditions of your employment with the district and which may affect your position. More specifically, you have requested that the personnel commission adopt rule 3.22, "Reassignment of Duties," and proposed rule 3.40, "Senior Management Exemptions."

Your position has been designated as senior management and some of the duties of your position as assistant superintendent, business services, have been assigned to a certificated employee on a temporary basis. You have filed a grievance with the district regarding the reassignment of these duties.

ANALYSIS

The Political Reform Act prohibits public officials from making, participating in making, or using their official positions to influence the making of any decision in which they have a financial interest. (Section 87100.) Public officials include employees of state and local agencies. (Section 82048.) Local agencies include school districts. (Section 82041.)

An official has a financial interest in a decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect upon the public generally, on the official or any member of the official's immediate family or on any person which has been a source of income to the official of \$250 or more in the preceding 12 months. (Section 87103(c), Regulation 18702.1(a)(1), copy enclosed.)

The effect of a decision is material if it is likely to result in your personal expenses, income, assets (other than interests in real property) or liabilities increasing or decreasing by at least \$250. (Regulation 18702.1(a)(4).)

For purposes of the Political Reform Act, salary from a public entity is not "income" (Section 82030(b)(2), and therefore you would not be required to disqualify yourself from participating in decisions which would affect your salary. Moreover, participation in a decision does not include an action by a public official related to his compensation or terms or conditions of employment or contract with the public entity. (Regulations 18700(d)(3), 18700.1(d), and 18702.1(c)(1), Morgan Advice Letter, No. A-85-245; Flitner Advice Letter, No. A-87-096, copies enclosed.) However, if approval of your recommendations by the personnel commission will increase or reduce by \$250 or more the expenses you may incur in processing or defending your grievance, you must abstain from participating. (Regulation 18702.1(a)(4).)

Ralph R. Burris
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For example, if your proposals to the district's personnel commission will save you costs of litigation or the cost of employing an attorney to process your grievance, or if your proposals will result in an award of damages through commission action, you should disqualify yourself from participating in those decisions and should abstain from submitting proposals to the district's personnel commission which may result in a financial impact upon your grievance. If the personnel commission's actions would not affect any of your personal financial resources other than your income, you may submit the proposals and otherwise participate in the decisions in question.

If you have any further questions regarding the above, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Blanca M. Breeze
Counsel, Legal Division

DMG:BB:ld

Enclosure

ANTIOCH UNIFIED SCHOOL DISTRICT

Personnel Commission

510 "G" Street - Antioch, California 94509
Telephone (415) 757-7110

Mar 1 11:15 AM '89

February 27, 1989

Fair Political Practices Commission
1100 K Street
P.O. Box 807
Sacramento, California 95804

To Whom It May Concern:

On advice of the legal counsel for the Antioch Unified School District, I am requesting an opinion from your agency as to certain proposals made by me as the Personnel Director in the Antioch Unified School District to the Personnel Commission. The counsel for the District has raised the possibility of a conflict of interest in the enclosed memo to me dated January 24, 1989.

The attorney has cited three specific items on which he feels a possible conflict exists. They are as follows:

1. I have requested that the Personnel Commission adopt a rule entitled, "3.22".
2. I have requested the Personnel Commission to adopt a proposed rule covering Senior Management Employees, entitled, "3.40".
3. The Antioch Unified School District Board of Education adopted Board Policy 2312 which, in the opinion of myself, a consultant hired by the Personnel Commission and an attorney contacted by me in my roll as Personnel Director, indicated was an infringement upon the authority of the Personnel Commission to classify positions in the classified service.

Copies of the two proposed rules and the Board Policy are enclosed for your reference.

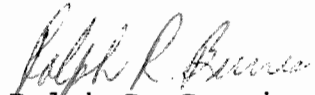
The attorney for the District feels that since my position has been designated as senior management (he considers me to be a senior management employee), and since some of the duties of my position as Assistant Superintendent, Business Services were assigned to a certificated employee on a temporary basis, and the fact that I filed a grievance with the District over the reassignment of these duties, that I may have a conflict in my recommendation to the Commission.

Fair Political Practices Commission
February 27, 1989

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Should you need any further information or have any questions about this request, please feel free to contact me in order that I may provide clarification on this matter.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Ralph R. Burris".

Ralph R. Burris
Personnel Director

RRB:bmc

Enclosures

cc: Personnel Commission

ANTIOCH UNIFIED SCHOOL DISTRICT
PERSONNEL COMMISSION

REASSIGNMENT OF DUTIES

3.22 When the duties of a classified employee are reassigned to a position not a part of the classified service or to another position in the classified service, the Commission ~~shall be required to~~ may conduct an investigation to insure that:

- (1) the assignment of these duties does not, in fact, create a position in the classified service;
- (2) the assignment of these duties is not being done in lieu of disciplinary action;
- (3) the assignment of these duties is not in conflict with the minimum education and experience requirements as established by the Commission for positions in the classified service;
- (4) the assignment of these duties does not require a reclassification of the position or positions.

This rule does not cover those changes in job assignments made for purposes of temporary promotions nor does it refer to changes in job assignments resulting from a gradual accretion of duties, nor temporary, lateral or incidental changes of duties not requiring promotion.

ANTIOCH UNIFIED SCHOOL DISTRICT

2000 - ADMINISTRATION

2300 - ADMINISTRATIVE DUTIES

ADMINISTRATIVE DUTIES

BP 2312

- I. All management positions have been established to allow the organization of specific management duties to be operated by the District as determined by the Superintendent with the approval of the Board of Education.
- II. No management position contains an inherent right to any specific job duty or area of supervision. Examples of duties contained in job descriptions which have been developed may be assigned to other management positions as the need arises in conformance with applicable provisions of the California Education Code.
- III. These activities may be accomplished by formal Board action or through Administrative supervision, depending on the significance of the change of duties and the permanency of the change.

LEGAL REFERENCE: California Education Code, Section 35020

Originating Office: Superintendent

Effective Date: 8/24/88

Revision Date(s): New

3. The right to be demoted or to transfer, without examination, to the class to which his position is reclassified. The employee may choose to transfer, demote, or exercise bumping rights at his option, and his right under the rule below.

3.34 Reemployment List for Displaced Incumbents (See Layoffs)

- A. Any displacement of a regular employee resulting from a reclassification of a position, positions, or class of positions shall be considered a lay-off for lack of work, and an appropriate reemployment list will be established in accordance with these rules.
- B. This rule shall be followed in all instances of reclassification whether it results in upgrading, downgrading, lateral class movement, bumping, or complete displacement of incumbents.

3.40 SENIOR MANAGEMENT EXEMPTIONS

3.41 Board May Designate Positions as Senior Management

- A. The Board of Education may adopt a resolution designating certain positions as senior management of the classified service. Notwithstanding the provisions of Chapter 10.7 (commencing with Section 3540) of Division 4 of Title I of the Government Code (The Rodda Act), the decision of the Board of Education shall not be deemed a matter subject to negotiation with any exclusive certified employee organization. The decision of the Board to make a position senior management shall be subject to review by the Public Employment Relations Board.
- B. No position funded in whole or in part by the Personnel Commission shall be made a part of the senior management of the classified service by the Board of Education without the concurrence of the Personnel Commission. (E.C. Sections 45256.5, 45260, & 45261 and Gov. Code Sections 3540-3549.3)

3.42 Senior Management Part of the Classified Service

Employees whose positions are designated as senior management of the classified service shall be a part of the classified service, and shall be afforded all rights, benefits, and burdens of other classified employees, except that they shall be exempt from all provisions relating to obtaining permanent status in a senior management position (E.C. 45256.5, 45260 & 45261).

3.43 Definition of Senior Management

Positions designated senior management must conform to either of the following two definitions in order to be legally declared senior management of the classified service:

- A. An employee in the highest position in a principal district program area, as determined by the Board of Education, which does not require certification qualifications, and which has district-wide responsibility for formulating policies or administering the program area.

- B. An employee who acts as the fiscal advisor to the Superintendent.
(E.C. 45108.5, 45260 & 45261)

3.44 Maximum Number of Positions

The maximum number of positions which may be designated as senior management positions shall be as follows:

- A. If the District has less than 10,000 units of average daily attendance (ADA), two positions.
- B. If the District has 10,000 to 25,000 units of average daily attendance (ADA), inclusive, three positions.
- C. If the District has 25,001 to 50,000 units of average daily attendance (ADA), inclusive, four positions.
- D. If the District has more than 50,000 units of average daily attendance (ADA), five positions. (E.C. 45108.5, 45260 & 45261)

3.45 Waiver Request for Additional Positions

The Board of Education may apply to the State Board of Education to waive the provisions of Section 45108.5 of the Education Code for the purpose of expanding the number and type of senior management positions. If the Personnel Commission does not agree with the Board of Education request for additional senior management positions, the Commission shall have the right to file a waiver protest with the State Board of Education. (E.C. 45108.7, 45260 & 45261)

3.46 Filling Senior Management Positions

Positions in the senior management of the classified service shall be filled using the rules and regulations of the Personnel Commission except as noted below:

- A. The position shall be filled from an unranked eligibility list developed by the Personnel Commission and arrived at by competitive examination(s) as determined by the Commission. The examination shall include test segments that will allow the candidates to demonstrate managerial ability.
- B. The appointing authority shall have the right to interview all eligible candidates certified by the Commission from the unranked list.
- C. The Personnel Commission shall determine the minimum qualifications for the position designating senior management, taking particular note of managerial ability necessary to successfully perform in the position and that the final eligibility list shall be unranked rather than ranked.
(E.C. 45256.5, 45260 & 45261)

3.47 Impact of Senior Management Designation on Incumbents

Any classified employee already serving in a position which is subsequently designated senior management of the classified service shall retain all rights, burdens and benefits of employment in the classified service, including the right to obtain or retain permanency and tenure. The incumbent's eventual successor in the position shall not be entitled to permanency rights in the senior management position. (E.C. 45256.5, 45260 & 45261)

3.48 Abolition of Senior Management Position

The Board of Education may adopt a resolution abolishing any or all positions of the senior management of the classified service. An employee occupying a senior management position abolished by the action shall become a member of the classified service or certificated service in a position to which he or she would otherwise be entitled if the employee had not been a member of the senior management of the classified service

If the employee in the senior management of the classified service had been a member of the regular classified or certificated service, he or she shall be entitled to a position which is the same as, or similar to, the position to which he or she holds rights outside of the senior management of the classified service. (E.C. 45104.5, 45260 & 45261)

3.49 Notification of Reassignment or Dismissal

Notice of reassignment or dismissal from a position in senior management of the classified service shall be provided in accordance with the following provisions:

- A. The senior management employee may be given a contract of employment stating a specific term of employment which shall not exceed four (4) years duration from the effective date of the contract.
- B. The Board of Education, with the consent of the employee concerned, may at any time terminate, effective on the next succeeding first day of July, the term of employment of, and any contract of employment with, a member of the senior management of the classified service; and reelect or reemploy the employee, on those terms and conditions as may be mutually agreed upon by the Board of Education and the employee, for a new term to commence on the effective date of the termination of the existing term of employment and contract. No contract of employment shall violate any provisions of the Education Code or these rules and regulations except as expressly allowed by statute.
- C. In the event the Board of Education determines that an employee in the senior management of the classified service is not to be reelected or reemployed as such upon the expiration of his/her term, he/she shall be given written notice thereof by the Board of Education at least 45 calendar days in advance of the expiration of his/her term.

- D. In the event the Board of Education fails to reelect or reemploy an employee as a member of the senior management of the classified service and the written notice required in Section C above has not been given, the employee shall be deemed reelected for a term of the same length as the one just completed, and under the same terms and conditions of employment (including compensation).
- E. The notice not to reelect or reemploy an employee who is a member of the senior management of the classified service shall be in writing and served in person or by certified mail (Return Receipt Requested) to the employee. This requirement will be deemed to have been met if the Notice Not to Reelect or Reemploy is sent certified mail to the last known home address on file in the Personnel Commission Office. Failure of the employee to retrieve delivered mail, or respond to notifications by the U.S. Postal Service of attempted delivery shall not be grounds for voiding notification, or the staying of the timeliness outlined in these rules. The responsibility for keeping the District informed of a home address is the requirement of the employee. For purposes of this rule, if a notice is mailed, the second working day following the postmark date of the notice shall be considered to be the official date of receipt (E.C. 35031, 45256.5, 45260 & 45261).

3.50 EXECUTIVE SECRETARY EXEMPTIONS

3.51 Board May Request Exemptions for Executive Secretaries

Upon the request of a majority of the members of the Board of Education, the Board may request that the Personnel Commission consider exempting certain executive secretary positions from specific provisions of the Education Code and these rules and regulations. The Personnel Commission shall have the power to grant or not grant such a request. The granting of waivers by the Personnel Commission shall be considered only if the Commission determines that it is in the best interests of the District, and not detrimental to the philosophy, intent, and purpose of the merit system. If a waiver is granted, it shall only be done pursuant to these rules and regulations (E.C. 45272, 45260 and 45261).

3.52 Executive Secretaries Part of the Classified Service

Any person employed in an exempt executive secretarial position shall continue to be afforded all of the rights, benefits, and burdens of any other classified employee serving in the regular classified service of the District, except that the employee shall not attain permanent status in an executive secretarial position.

3.53 Definition of Executive Secretary

Positions designated as executive secretary by the Personnel Commission and thus exempt under provisions of this rule shall be limited to executive secretarial positions reporting directly to members of the Board of Education, the District Superintendent, or not more than four (4) principal deputies of the District Superintendent, or all of these positions.

3.54 Filling Executive Secretary Positions

Positions declared by the Personnel Commission as executive secretary for purposes of this rule shall be filled using the rules and regulations of the Personnel Commission except as noted below:

- A. The position shall be filled from an unranked eligibility list developed by the Personnel Commission and arrived at by competitive examination(s) as determined by the Commission.
- B. The appointing authority shall have the right to interview all eligible candidates certified by the Commission from the unranked list.
- C. The Personnel Commission shall determine the minimum qualifications for the position designated executive secretary, taking particular note of the qualifications necessary to perform successfully at this level, and that the final eligibility list shall be unranked rather than ranked.

3.55 Impact of Executive Secretary Designation on Incumbents

Any classified employee already serving in a position which is subsequently designated executive secretary by the Personnel Commission shall retain all rights, burdens and benefits of employment in the classified service, including the right to obtain or retain permanency and tenure. The incumbent's eventual successor in the position shall not be entitled to permanency rights in the executive secretary position.

3.56 Discontinuance of Executive Secretary Services

Any person whose services in an executive secretarial position are discontinued for a cause other than a cause for disciplinary action specified in the Education Code or in these rules and regulations, shall have the right to return to a position in a classification the employee previously occupied or, if that classification no longer exists, in a similar classification, as determined by the Personnel Commission.

3.57 Notification of Discontinuance of Service

Notice of discontinuance of service in an exempt executive secretarial position shall be provided in accordance with the following provisions:

- A. In the event the Board of Education determines that an employee serving in an exempt executive position is not to continue in that position (except for disciplinary causes as outlined in the Education Code or these Rules and Regulations), the impacted employee shall be given written notice thereof by the Board of Education at least 45 calendar days in advance of the last day in paid status in the exempt position.
- B. The notice not to continue to employ a person who is serving in an exempt executive secretary position shall be in writing and served in person or by certified mail (Return Receipt Requested) to the employee. This requirement will be deemed to have been met if the Notice to Discontinue Executive Secretary Service is sent certified mail to the last known home address on file in the Personnel Commission Office. Failure of the employee to retrieve delivered mail, or respond to notifications by

the U.S. Postal Service of attempted delivery shall not be grounds for voiding notification, or the staying of the timeliness outlined in these rules. The responsibility for keeping the District informed of a home address is the requirement of the employee. For purposes of this rule, if a notice is mailed, the second working day following the postmark date of the notice shall be considered to be the official date of receipt.

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

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MEMORANDUM

OF COUNSEL:
JOHN R. VAN DE WATER

CONFIDENTIAL

TO: Ralph Burris, Assistant Superintendent
Antioch Unified School District

FROM: Paul M. Loya *PML*

DATE: January 24, 1989

In reviewing some of the recent policy and proposed Commission Rules which we have discussed, including (1) your request for an opinion on the proposed Personnel Commission Rule 3.22, (2) the rules you developed on senior management employees and (3) your request for an opinion regarding the Board policy on reassignment of duties, the following issue has come to mind.

Because you are a senior management employee, because some of your duties have been reassigned, and because of your grievance involving reassignment of duties, one could perceive your advising of the Personnel Commission and your actions in your capacity as classified Director of Personnel as a conflict of interest.

Government Code §87100 provides:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Public officials include employees of state and local agencies (Government Code §82048). Local agencies include the school districts (Government Code §82041).

CONFIDENTIAL

Ralph Burris, Assistant Superintendent

January 24, 1989

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I suggest that you consider requesting an opinion from the Fair Political Practices Commission as to whether the situation constitutes a conflict of interest. The Commission is required to respond to requests for opinions within 14 days of the request.

Please give me a call so we may discuss this matter further.

PML:hc

cc: Alan Newell

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